IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WP(C).No. 32403 of 2006(G)

PETITIONERS:

1. M/S.AISHWARYA BUILDERS AND DEVELOPERS,
   A PARTNERSHIP FIRM, HAVING PRINCIPAL PLACE OF
   BUSINESS AT IX/1035, JAWAHAR ROAD, KOCHI-682 002
   REP. BY ITS MANAGING PARTNER,
   MR.V.S.KRISHNA MOORTHY.

2. MR.V.S.KRISHNA MOORTHY, MANAGING PARTNER
   M/S.AISWARYA BUILDERS AND DEVELOPERS
   IX/1035, JAWAHAR ROAD, KOCHI-682 002.

3. MRS.GIRIJA KRISHNA MORTHY,
   PARTNER, M/S.AISWARYA BUILDERS AND DEVELOPERS
   IX/1035, JAWAHAR ROAD, KOCHI-682 002.

BY ADV. SMT.JAYASREE MANOJ
SRI.M.RISHIKESH SHENOY

RESPONDENTS:

1. STATE OF KERALA, REP. BY THE
   CHIEF SECRETARY, SECRETARIAT BUILDING,
   THIRUVANANTHAPURAM.

2. THE TAHSILDAR (ASSESSING AUTHORITY),
   KOCHI TALUK, TALUK OFFICE, FORT COCHIN,
   KOCHI-682 001.

BY GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J

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W.P.C.No. 32403 Of 2006

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Dated this the 6th day of December, 2006.

JUDGMENT

This writ petition is filed contending that Ext.P21 assessment under the K.B.T Act, 1975 is wholly baseless and arbitrary and that the assessment order is cryptic and that the provision for appeal is not an efficacious alternate remedy in the circumstances.

2. Heard the learned counsel for the petitioner and learned Government Pleader.

3. On record are different materials in the form of representations, objections etc. by which the petitioner had objected to the proposed assessment under the KBT Act, 1975, on the ground that the building in question consists of different residential apartments, each having a plinth area of below 100 $m^{2,}$ and that the construction was on the basis of different agreements between the holders of the fractional title to the

land and therefore, each of the apartment has to be assessed separately, in which event, the apartments would not be taxable under the KBT Act since each of them are having plinth area below $100m^2$.

4. On the basis of such objections, the assessing authority was duty bound to apply its mind on such objections and come to a decision on the said contentions. The application of mind and the decision following out of such process has to be reflected in the assessment order. However, what ultimately came out is only a standard form of assessment, in a printed format, stating no reasons for rejecting or upholding the contentions of the assessee. Under such circumstances, I do not find any ground to sustain impugned Ext.P11. It has to go. Earlier the better. Any delay may only work out ultimately against the interest of the Revenue.

5. In the result, the writ petition is allowed quashing Ext.P21 on the sole ground that it has been issued without stating any

reason. This judgment will not stand in the way of the assessing authority to further consider the matter, after giving an opportunity of being heard, to the writ petitioner. The writ petitioner shall be heard and the matter finalised within a period of two months from the date of receipt of a copy of this judgment.

This writ petition is disposed of as above.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

SJ